

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

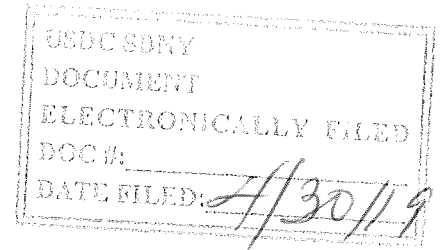
CHRISTOPHER JACKSON,

Plaintiff,

-against-

ANTHONY ANNUCCI; ROBERT MORTON;
SGT. PACHANCO,

Defendants.



19-CV-2013 (VB)

ORDER OF SERVICE

VINCENT L. BRICCETTI, United States District Judge:

Plaintiff, appearing *pro se*, brings this action under 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights. By order dated April 24, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.

STANDARD OF REVIEW

The Court must dismiss an *in forma pauperis* complaint, or portion thereof, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they suggest," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

DISCUSSION

A. Rule 21 of the Federal Rules of Civil Procedure

Plaintiff asserts that on October 19, 2018, Defendant Sgt. Pachanco, C.O. Harris, and C.O. Tom used excessive force against him. The Clerk of Court is therefore directed, under Rule 21 of the Federal Rules of Civil Procedure, to amend the caption of this action to add C.O. Harris and C.O. Tom as Defendants. This amendment is without prejudice to any defenses that these Defendants may wish to assert.

B. Service on all Defendants

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *See Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013) (citing 28 U.S.C. § 1915(d)); § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP). Rule 4(m) of the Federal Rules of Civil Procedure generally requires service of the summons and complaint to be completed within 90 days of the date the summons issues, and it is Plaintiff’s responsibility to request, if necessary, an extension of time for service. *Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012). *But see Murray v. Pataki*, 378 F. App’x 50, 51-52 (2d Cir. 2010) (summary order) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service on Defendants Acting Commissioner Anthony Annucci, Superintendent Robert Morton, Sgt. Pachanco, C.O. Harris, and C.O. Tom through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service

Process Receipt and Return form (“USM-285 form”) for each Defendant. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all of the paperwork necessary for the Marshals Service to effect service upon each Defendant.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

C. Local Civil Rule 33.2

Local Civil Rule 33.2, which requires Defendants in certain types of prisoner cases to respond to specific, court-ordered discovery requests, applies to this action. Those discovery requests are available on the Court’s website under “Forms” and are titled “Plaintiff’s Local Civil Rule 33.2 Interrogatories and Requests for Production of Documents.” Within 120 days of service of the complaint, Defendants must serve responses to these standard discovery requests. In their responses, Defendants must quote each request verbatim.¹

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

The Clerk of Court is directed to add C.O. Harris and C.O. Tom as Defendants under Fed. R. Civ. P. 21.

The Clerk of Court is further instructed to issue summonses and complete the USM-285 forms with the addresses for Acting Commissioner Anthony Annucci, Superintendent Robert Morton, Sgt. Pachanco, C.O. Harris, and C.O. Tom and deliver all documents necessary to effect service to the U.S. Marshals Service.

¹ If Plaintiff would like copies of these discovery requests before receiving the responses and does not have access to the website, Plaintiff may request them from the Pro Se Intake Unit.

Local Civil Rule 33.2 applies to this action.

The Clerk of Court is directed to docket this as a “written opinion” within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: April 30, 2019
White Plains, New York

A handwritten signature in black ink, appearing to read 'Vincent L. Briccetti', written in a cursive style.

VINCENT L. BRICCETTI
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Acting Commissioner Anthony Annucci
Department of Corrections and Community Supervision
Harriman State Campus
1220 Washington Avenue
Albany, New York 12226
2. Superintendent Robert Morton
Downstate Correctional Facility
121 Red Schoolhouse Road
Fishkill, New York 12524
3. Sgt. Pachanco
Downstate Correctional Facility
121 Red Schoolhouse Road
Fishkill, New York 12524
4. C. O. Harris
Downstate Correctional Facility
121 Red Schoolhouse Road
Fishkill, New York 12524
5. C.O. Tom
Downstate Correctional Facility
121 Red Schoolhouse Road
Fishkill, New York 12524